

MINUTES OF THE MEETING OF THE
UNIFORM COMMERCIAL CODE COMMITTEE
OF THE STATE BAR OF CALIFORNIA

September 11, 2002

9:30 a.m.

Videoconference Meeting at
Brobeck, Phleger & Harrison's L.A., S.F., and San Diego Offices

The September, 2002 meeting of the Uniform Commercial Code Committee (the "Committee") was called to order at approximately 9:30 a.m. with Mikel Bistrow presiding.

A. Administrative Matters.

1. Appointment of Secretary. Pamela Martinson was appointed as the secretary for the meeting.

2. Approval of July Meeting Minutes. The minutes of the July 30, 2002 meeting were approved in the form disseminated prior to the meeting, with minor corrections to the spelling of certain persons' names.

3. Confirmation of Future Meeting Dates/Locations. The Committee confirmed future meeting dates as follows:

October 8th (Tuesday): In-person meeting at the offices of the California Secretary of State in Sacramento. Directions to be provided. Meeting will start at 10:30 a.m.

November 12th (Tuesday): videoconference meeting at the offices of Morrison & Foerster in Los Angeles, San Diego and San Francisco, 9:30 a.m.

December 3rd (Tuesday): videoconference meeting as above.

January 7th (Tuesday): tentative date, with meeting likely by videoconference.

B. Committee Membership. All applications submitted to the Executive Committee were approved and the Committee Chairs have been in contact with each new member. Mikel Bistrow noted that several new members were in attendance and welcomed them. New members as of the next meeting are the following: Eric G. Baron, Dorothy V. Brew, Stephan L. Eberle, Victoria A. Gilbert, Jill H. Matichak, Vasco H. Morais, Prof. Arnold Steven Rosenberg, Nicole E. Dale Slaton and Robert V. Slattery, Jr.

C. Secretary of State Automation Project. Paul Pascuzzi reported on the software being developed for the project. He and Doug Kraft recently met with personnel from the Secretary of State's Office and were shown the on-line searching and filing system as it is in use in Texas. They had opportunity to make suggestions on its use to Kathleen Vasquez and the project consultants. Several aspects of the system were confusing for users, in Doug's and Paul's

opinions. The system is in the design phase and the Secretary of State is looking for feedback, so the Committee's October visit is well-timed. Paul felt that the system designers could still take input and make modifications, especially those geared to making the system more user-friendly. In particular, the Secretary of State is interested in knowing if an ACH capability for making deposits into accounts to pay for use of the system is necessary or desirable. The Committee felt that this might be useful for large firms and financial institution users. Harry Sigman noted that payment issues have been in the forefront recently and that this is the time to comment on any payment mechanisms. He will confirm that the Committee will be able to demo the system during the October meeting and also suggested that Committee members prepare very specific questions to pose to the designers at that time. During this meeting, the Committee raised several questions concerning payment, receipts, invoicing, replenishing accounts, order of filing control, the ability to file attachments in a Word or PDF format, and how to download files.

Paul finally noted that his term on the Committee was ending and called for new members to join the subcommittee. Nicole Slaton and Vasco Morais volunteered.

D. Revised Article 1 Project. The most recent version of the Article 1 Report was included in the meeting package. Harry Sigman reported that the report is not in a proper form to submit to the legislature, and that all Committee members should review and comment on the draft. The current legislation died, but a new bill could be introduced. Pauline Stevens and Tori Brew volunteered to join the subcommittee.

Peter Carson raised a request by other interest groups to review the draft report. Harry Sigman felt that it is too early in the process, and any decision on releasing drafts should be deferred until a later date.

E. Articles 3/4 Project. Jim Purvis, the subcommittee's chairperson, reported that three new members (Tori Brew, Eric Baron and Arnold Rosenberg) had joined the subcommittee. Jim further reported that the subcommittee had met and identified six major topics within Articles 3 and 4 and divided the work accordingly. Each member of the subcommittee will report on one of these topics. They plan to submit a rough draft of their full report to the Committee by early November, in anticipation of a report capable of submission to the legislature being ready by January.

Harry Sigman encouraged the subcommittee to accelerate this timetable slightly so that full discussion of the report could take place at the November 12 meeting of the Committee. He suggested that the individual reports be circulated as each became available, and not wait until all were complete. Harry indicated that it was important to generate a draft report as soon as possible to highlight the issues for the Committee members so the Committee members would have the ability to review it and provide comments.

F. Website Review and Development. Suzanne Weakley reported that the website was complete and working at this point. Their objective had been to develop a format capable of accommodating new works of the Committee on an ongoing basis, and this has been achieved. Suzanne indicated that Gary Rosenbaum would chair the subcommittee going forward, as her term of service was ending. Bob Hagle and Vasco Morais volunteered to join the subcommittee.

Jobs of the subcommittee members will include adding new content and working with the State Bar webmaster. Suzanne thanked Nancy Leventhal for her contribution to the section providing useful links to other web sites.

Peter Carson reported on the Business Law Section's E-news program. The Executive committee hopes to use electronic distribution of information by each committee to increase membership and make membership in the Section more relevant. Possible mechanisms for electronic distribution of information are "list serves" (permit two-way communication) or "e-blasts" (one-way messages). The Executive Committee is encouraging each committee to develop distribution lists to ensure that relevant information will be distributed to interested constituencies. A discussion of whether responsibility for this task should be placed with the website subcommittee or elsewhere was deferred to the October meeting.

G. CLE Program. Harry Sigman reported that he, Sandra Shippey and Kathy Vasquez are prepared for the presentation at the Annual State Bar Meeting in Monterey, scheduled for October 10th, between 2:15 p.m. and 4:15 p.m.

H. Legal Opinion Task Force. Bill Harvey reported that the subcommittee continued to hold meetings and was finishing the section on perfection by filing. It will next address issues regarding perfection by control. The next meeting was scheduled for September 19. It was noted that the Tri-Bar Committee is close to completing its report. Harry Sigman urged the subcommittee not to miss the opportunity to comment on the Tri-Bar Report. He also favored conforming the two reports where appropriate. Peter Carson reported on other opinion projects also underway. All seem to be similarly timed for completion at this point.

I. "Model" Control Agreement. It was noted that the form of deposit account control agreement developed by the Committee is now available on the State Bar website.

J. Subcommittees. New members are encouraged to volunteer to subcommittees of interest.

K. Legislative Items. Marty Opich indicated that the legislature was in recess and there was nothing new to report.

L. Article 9 Updates. Marty Fleisher reported on issues arising in the context of making a fixture filing in Wyoming. The county involved refused to accept the filing as all UCC records had been sent to the state level. He eventually recorded an affidavit by a local title company in order to make the required Article 9 filing. Mikel Bistrow commented that in New York, local filing offices are also refusing all filings other than real property filings. This could impact the ability to terminate filings previously made in these local offices.

The Committee discussed personal property judgment liens, which are filed with the Secretary of State, but not in accordance with Revised Article 9 rules for location of filing. Searchers must still look to the records in the jurisdiction where the debtor is physically located. Paul Pascuzzi indicated that searchers should be able to find these liens on-line under the new automated system.

M. Other Issues.

1. Pauline Stevens reported that the Committee is required to submit an article for publication in the Business Law News by November 8. Peter Carson volunteered to look into this issue.

2. Mikel Bistrow noted that this was her last meeting as her term of membership has ended. She thanked all current members and gave special thanks to all members also completing their term of service on the Committee.

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The meeting was adjourned at approximately 11:15 a.m.